

Appeal Conference Information Format

Appeals Conference Information:

Serial Number: 10/631,351

Filing Date: 31 July 2003

Art Unit: 1641

Appeals Conference Date: 4 December 2006

Examiner: Melanie Yu

Signing Examiner: Long Le

SPE: Long Le

Conferee: Larry Helms

Total Office Actions: 2

Decision: (Reopen, Allow, or Examiner's Answer) Reopen

Grounds of Rejection Present: 35 USC 103(a) and obviousness double patenting

Example:(35 USC 101, lack of utility; 112, first paragraph, lack of enablement)

Were the rejections agreed to be maintained in the conference set forth in the Examiner's Answer? : the rejections were not maintained because the references cited by the examiner failed to teach the element of a hydrophobic surface. A hydrophobic substrate was taught by Caldwell et al., but the surface of the hydrophobic substrate was rendered hydrophilic in the reference, and therefore the hydrophilic molecules were immobilized on a hydrophilic surface, not a hydrophobic surface.

The appeal cannot go forward because the references do not provide a hydrophobic *surface*. The case could have been reopened earlier. However, when Long Le was consulted about the combination of references for final rejection, he told me to use the combination of references that provided for a hydrophobic *substrate* that is coated with a material to render the surface hydrophilic prior to immobilization of macromolecules, and the claims were interpreted as not excluding additional layers between the hydrophobic surface and the hydrophilic macromolecules. The rejections were maintained after final arguments were submitted upon the request of the SPE. Upon submission of applicant's appeal brief, which were the same arguments presented in the advisory action, applicant's independent claim was reinterpreted to exclude additional layers between the hydrophobic surface and the hydrophilic macromolecules. Therefore the current rejections cannot be maintained because the references used teach intermediate layers between the hydrophobic surface and the hydrophilic macromolecules.

For reopening or allowed cases comments should include why claims are now allowable or why the appeal can not go forward and whether the case could have been allowed or reopened earlier.